

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
JULY 27, 2021
HELD ONLINE VIA ZOOM APPLICATION

Commission Members Present: Timothy Archambault, Chair, James Kelley, Jr., Richard Shiers, and Barry Norris

Commission Members Absent: Edward Kelleher

Staff Members Present: Henry Jennings, Carol Gauthier, Joy Bonenfant, Miles Greenleaf, Jaime Wood, and Dr. Zachary Matzkin

1. **Call the Meeting to Order and Introductions:** Timothy Archambault, Chair
Henry Jennings stated there are 3 sets of minutes for approval. May 7, 2021, May 21, 2021, and June 28, 2021. Commissioner Kelley made a motion to accept the minutes. Commissioner Shiers seconded. Vote 2-0 for May 7th and May 21st (Commissioner Kelley and Commissioner Shiers). Vote 3-0 for May 7th, May 21st, and June 28th (Commissioner Kelley, Commissioner Shiers, and Commissioner Norris).
2. **Commission Discussion About Policies and Procedures for Resolving Violations.** The Commission will discuss the options for resolving harness racing violations and the pros and cons for those options.
Henry Jennings stated if the licensee cooperates that generally results in lower penalties. Where do you want to invest your time and resources? Do you want to spend your resources settling cases or would you rather focus on Maine harness racing and its success? Commissioner Kelley stated the key is what happened with previous commissions. The consent agreements that they did not accept they thought the penalty wasn't enough. He thinks there is a conception out there that if you come before the Commission they're going to get less of a penalty. That may have been the story in the past. Commissioner Shiers stated he is not in an agreement that they pass out penalties less than minimum. He is for expediting these penalties. Mr. Jennings stated if expediting resolutions of violations is important to you than consent agreements are much faster. Commissioner Norris stated would it not be to their benefit to have a policy written for consent agreements and that's the policy that they follow. Commissioner Archambault stated based on what Commissioner Norris said if they were to establish these consent agreements would these have to be added as certain elements to the rules and possibly augment or adjust the actual firm penalties for those that chose to attend a hearing. Mr. Jennings stated he thinks a written policy would be a good idea. He could draft it up from the feedback today and bring it back at another meeting and then be finalized. After further discussion, Commissioner Shiers stated he supports Mr. Jennings with consent agreements for 2, 3, 4, and 5 levels. If they do a Class I hearing it would drag out. He is still hesitant to put a Class I or Class A on a consent agreement. Mr. Jennings stated they do prohibited substance cases by a consent agreement. Commissioner Kelley stated he agrees for the first offenders versus the three to five-year offender. Commissioner Norris stated if Mr. Jennings could research prior policies and get them out to them so they can look at them while they are looking at the proposals. They then may be able to clarify certain things for this last policy that they come up with so he can make an informed decision for the future. Mr. Jennings stated that is a good idea. He thinks the consent agreement actually specifies the model template that they have. He stated he would draft a policy for the subsequent meeting.

3. **Department Request to Provide Operational Support for Maine's Seven Pari-Mutuel Fairs.** During 2021, seven pari-mutuel fairs are scheduled to conduct forty-six days of harness racing. The Department is proposing to provide \$1,000/race day of operational support for 2021.

Mr. Jennings stated of those eight fairs there were at least four fairs that were struggling to break even on harness racing. It cost between \$10,000 and \$13,000 to host a meet at a fair. In 2019, they gave all pari-mutuel fairs \$2,000 a day to offset expenses. He would propose to give each of the seven fairs \$1,000 a day in operational offset cost. Commissioner Kelley stated two years ago they paid the four smaller fairs \$2,000 a day and not all seven. Is that correct? Mr. Jennings stated they paid all eight fairs the \$2,000. The reason they did that was because it became complicated to figure out which fairs were needy, and which were not. It's very hard to try to separate out exactly what is a pari-mutuel cost versus what is just a cost of having a fair. Commissioner Norris stated if the Commissioners decide that maybe you have two or three hedging fairs that you want to make sure they are viable for this year and maybe viable for next. He doesn't think the race directors of the remaining fairs would disagree. Commissioner Shiers stated his recollection was in 2019 they awarded Topsham and Union more money than the rest of the pari-mutuel fairs. He's okay to do that again. He would be supportive of \$2,000 a day to Topsham and Union. Commissioner Kelley stated he thinks that's good. His point is to make sure they're doing the right thing for the struggling fairs. Commissioner Norris stated he would recuse himself from the vote. Commissioner Kelley made a motion that they do Mr. Jennings original plan with the added \$1,000.00 for the two smaller fairs that are racing. Commissioner Shiers seconded. Vote 3-1 Commissioner Norris abstained.

4. **Future Rulemaking.** The Commission will discuss future rulemaking concerns and priorities. Mr. Jennings stated he would take responsibility for totally missing an important piece in Chapter 7. He would eliminate a horse go on the stewards list if it breaks off a qualifier. He wants to fix his error there and take a look at the trainer responsibility. They cannot hold a groom accountable. In Chapter 1, he would like to propose a mechanism for registering a stable and training center. It gives the Commission jurisdiction over what goes on in these areas. It is a problem area and they don't have the right to go in there. In Chapter 17, he would like to clean up the rule. Commissioner Norris asked when they do rulemaking is it possible that you make the rule and you talk about developing a procedural manual to go along with that rule so the procedure can be fluent and changed. For example, in the rule you want to be able to give authority to somebody to go to a stable and look at the actions that are happening in that stable. In a policy, you could say A,B,C,D, and E in the stable rather than over stating in the rule. Mr. Jennings stated he thinks you can do that to a certain degree. There's nothing about a policy that is enforceable. If it needs to be something that you can enforce than it can't be in the policy. The policy could give some boundaries and/or guidelines as to how you go there. Commissioner Norris stated it helps both sides. It helps the stable, it helps the person doing the enforcement. He just threw that out there. Commissioner Kelley stated the problem that he has with what Mr. Jennings had mentioned with the enforcement in the stable areas. He always thought where the Commission licenses all these tracks that those facilities were included as part of the license. The only place the license covers is the paddock. Mr. Jennings stated as far as he knows Commissioner Kelley you are correct. Commissioner Norris stated the responsibilities of the State Stewards should be listed in Chapter 3 where the officials are. In Chapter 11, it talks about the officials are supposed to make daily reports to the Commission. He asked for an overview of the reports at the last meeting. Mr. Jennings stated they are doing a lot of testing this year. They are doing two test from each race. Commissioner Norris stated he just wants to know how many received violations and no names. Commissioner Kelley asked if there is a State Stewards report that gets done. Commissioner Norris stated in Chapter 3 it talks about a daily report. Mr. Jennings stated it's the judges report. Mr. Greenleaf stated the State

Steward would provide the program which would include the judges report, scratches, how many entries, how many raced, and write comments of each race. Mr. Jennings stated if its about transparency and accountability then it's something he supports. Commissioner Kelley asked whose responsibility is it to make sure that everybody that's participating is licensed. Mr. Jennings stated that at the end of the day the judge's do that. When that program is presented to the judges, they have to clear the program. If there is a pending application in the office, they are not going to prevent a horse from racing because they haven't had time to go to the office. Commissioner Kelley stated he questions this because they are at the track as State Stewards and this stuff is not getting done. He's noticed that nobody is checking licenses at any paddock as far as he knows. Mr. Jennings stated if it's the collective will of the Commission to be more diligent than simply convey that to the department. They will take that to the tracks. Commissioner Kelley made a motion to direct the staff to contact the tracks about enforcing license requirement at the gate security to check licenses. Commissioner Norris seconded. Vote 4-0.

Michael Cushing stated there is a couple of issues. One is the licensing issue. Maybe a database access for the judges. Another issue, he thinks eliminating the break off a qualifier is giving the betting public an honest chance. The third thing he would weigh in on is, if part of the owner/trainer application could it be on there that possibly during licensing that they agree where their horse is located is subject to the Commission at any time going there for horse identification or out-of-competition testing. Commissioner Kelley agrees with Mr. Cushing. Say somebody gets suspended for 30 days their license, if they're training at Bangor or Cumberland, they can just switch their horses over to their assistant trainer and stay on the grounds. They can't go into the paddock. They avoid the penalty by being able to stay on the grounds and keep training as usual without any penalty by the Commission not including the whole facility.

5. Public Comment

Diann Perkins stated her concern is about the promotion money and that the Sire Stakes Program is not being promoted. She has not seen any type of promotion advertising the stakes races or anything. In Chapter 9, Section 5.2A they are allowed some money to do some promoting and it can be issued by the department to promote this program. When they dissolved the State Harness Racing Promotion Committee. Where is that money going and is it being used for promotion? Mr. Jennings stated the money that comes from the handle might end up being over the course of the year \$35,000. That money is currently being used by Atlantic and they have a contract with them. They're doing primarily Facebook because of the small amount of budget that they have for promotion this year. They do have plans where they are going to jump in a little more aggressively with the fairs. They have the fair races on the radio again this year.

Ronald Merrill stated for clarity is the break off a qualifier going to be taken off. Is that officially taken off now? Mr. Jennings stated it was supposed to be in the last proposal and he somehow managed to leave it on. The short answer is breaking off a qualifier is still the law and should still be enforced.

6. Adjourn

Commissioner Norris made a motion to adjourn. Commissioner Kelley seconded. Vote 4-0. 12:19 p.m.